

This letter responds to questions about the rate of tax for various medical products. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

September 1, 2006

Dear Xxxxx:

This letter is in response to your letter received in Legal Services May 22, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have started an online retail business selling medical supplies and equipment to individuals, doctor groups and nursing homes both in Illinois and outside Illinois. I am writing to request a ruling on whether the items I sell qualify for the 2% sales tax rate for qualified medical equipment as provided in Section 130.310©)(2) [sic] of the Retailers Occupation Tax. Please advise if the following items are considered to be 'directly substituting [sic] for malfunctioning part of the body.' If possible I would like receive [sic] both a binding and non binding reponse [sic] so I can get the information faster but also have a binding response. My items are as follows:

commodes
grab bars
ostomy supplies
bath and shower benches
hand held shower
safety rail
elevated toilet seat
blood pressure monitors
diabetic supplies (test strips, glucose tablets, lancets, glucose monitoring systems, portable digital medical records)
disposable undergarments
sphygmomanometer

walkers
crutches
canes
geriatric recliners and trays
HIV test kits
allergy test kits
wound care (bandages, gauze, tape)

Thank you for your assistance.

DEPARTMENT'S RESPONSE

For information regarding the taxation of drugs, medicines and medical appliances we suggest you take a look at the Department's regulation at 86 Ill. Adm. Code 130.310. Those products that qualify as medicines, drugs, or medical appliances are taxed at the reduced low rate of 1% plus applicable local taxes. Those that do not qualify for the low rate are taxed at the State rate of 6.25%, plus applicable local taxes.

The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." Please note that 86 Ill. Adm. Code 130.310(c)(2) provides that medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. In addition, not all items prescribed by physicians or other licensed health care professionals qualify for the low rate. A medicine or drug is defined at Section 130.310(c)(1) as "any pill, powder, potion, salves, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities."

Examples of items that qualify for the reduced rate are artificial limbs, dental prostheses and orthodontic braces, heart pacemakers, crutches and orthopedic braces, and wheelchairs. As a general proposition, diagnostic, treatment, and rehabilitative equipment items do not qualify for the reduced rate of tax as medical appliances because such items are not "for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.310(c)(2).

You can determine the tax status of the items listed in your letter by applying these principles. You can also review the Department's letters to see if any have already discussed your issue. These letters are available on our website. For example, if you go to our website and click on "Laws/Regs/Rulings," you will go onto a page that makes this kind of information accessible. On the bottom of this page, there is a box marked "Full Text Search" in which you can enter key words that will take you to any letters that may have been written that discuss the topic you are interested in. For example, if you enter the word "commodes," you will go onto a page that lists all the entries having the word "commodes." When I did this, I came up with letter ST 06-0068-GIL. This letter indicated that commodes have generally not qualified for the low rate of tax.

Of the items on your list, letters have been issued that indicate that commodes, grab bars, bath and shower benches, hand held showers, safety rails, elevated toilet seats, blood pressure monitors, sphygmomanometers, geriatric recliners and trays, and HIV test kits generally do not qualify for the low rate of tax. There is no letter that already discusses whether or not allergy test kits qualify for the low rate, but following the guidance in the regulations, we do not believe that allergy test kits would qualify.

There have also been letters issued that indicate that ostomy supplies, diabetic supplies, disposable undergarments for adults, walkers, crutches, and canes, generally do qualify for the low rate of tax. The Department's letter ST 95-0518 discusses what kinds of wound care items qualify for the low rate.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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